IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

INSURANCE APPEAL No.17 of 2004

I.C.NO.11/1996 OF THE EMPLOYEES' INSURANCE COURT, KOLLAM

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APPELLANT: 1ST OPPOSITE PARTY:-

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
THRISSUR.

BY STANDING COUNSEL SRI.T.P.M.IBRAHIM KHAN.

RESPONDENTS: APPLICANT & OPPOSITE PARTIES 2 & 3:-

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1. G. RAMESSAN, "GANDHARVA BAR",
HOTEL CHOLA INTERNATIONAL, ARISTO JUNCTION,
THAMPANOOR, THIRUVANANTHAPURAM.

2. N. SURENDRAN, "CHOLA RESTAURANT",
HOTEL CHOTA INTERNATIONAL, ARISTO JUNCTION,
THAMPANOOR, THIRUVANANTHAPURAM.

3. BIJU RAMESH, TOURIST HOME,
HOTEL CHOLA INTERNATIONAL, ARISTO JUNCTION,
THAMPANOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SMT.PRIYA KRISHNAMOORTHY

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

K.Padmanabhan Nair,J.

Insurance Appeal No.17 of 2004

Dated, this the 9th day of April, 2007

JUDGMENT

The Regional Director of Employees State Insurance Corporation is the appellant in this appeal. This appeal is filed against an order passed by the Insurance Court, Kollam by which it has set aside an order passed by the Regional Director under Section 45A of the Employees State Insurance Act and subsequent recovery proceedings on an application filed by the respondent under Section 75 of the Act.

2. The 1st respondent is running a Bar, by name 'Gandharva Bar', in a building in which hotel 'Chola International' is housed at Aristo Junction, Thampanoor, Thiruvananthapuram. The hotel Chola international, which is a Tourist Home is run by Biju Ramesh, who is none other than the son of the owner. There is also a restaurant run in the name and style 'Chola Restaurant'. The licence of the said restaurant stands in the name of the 3rd respondent who, according to the appellant, is a close relative of respondents 1 and 2. The specific case put forward by the appellant is that in fact all these institutions are run by the 1st respondent, father, and only to escape from the provisions of the

Act it has been split up as three establishments. An inspection was conducted by an Inspector of the appellant-Corporation on 11.10.1994 and an inspection report was prepared. According to the appellant, notice was issued to the respondents. They did not appear and contest the matter. So, relying on the inspector's report and other materials, an order under Section 45A of the Act was passed, by which it was held that there was a commonality of all these establishments and it was liable to be covered under the provisions of the Act. Challenging that order, the 1st respondent filed I.C.No.11 of 1996. The Insurance Court took a view that no reliance can be placed on Exhibit B1 inspection report. It is stated in the order that as per the inspection report when D.W.1 visited the establishments on 11.101994, one T.M.Aliyar, the Manager, was there. He produced only the Muster Rolls and as per that Muster Rolls, there were more than 20 employees from 1.7.1994 and one fridge, two freezers and one wet grinder were under use. The Insurance Court took a view that there is nothing on record to show that Aliyar was the Manager and hence the same cannot be relied on. It was also found that the statement of Aliyar was not recorded and, further, there is no material to hold that there is common supervision of

these three establishments. After verifying Exhibit A1 series – general ledger – and Exhibit A2 series – cash books – the Insurance Court found that there is nothing on record to show that there is any financial integrality or any common administration or any material justifying the clubbing of these three establishments.

3. The learned counsel appearing for the appellant has argued that one B.Karunakara Menon was examined as P.W.2 on behalf of the 1st respondent-applicant, who claims to be an Administrator and he is looking after the business affairs of the 1st respondent and he has not been appointed as Administrator of a particular establishment and it is his duty to manage all business establishments run by the appellant. It is pointed out that he himself had admitted that one Aliyar was present when the Inspector inspected the establishments. It is argued that there is no statutory requirement that an inspection report shall be attested by representative of the employer. It is pointed out that the person who affixed his signature had affixed the seal of establishment, which will prove beyond any doubt that the same was a genuine document. It is also argued that one of the conditions imposed by the Excise authorities while granting

licence to the Bar that it must have a restaurant and the licensee himself shall conduct the same. It is disputed by the counsel for the respondents contending that there is no such condition and the only condition is that any customer who comes to the Bar makes a demand for food, the licensee shall make arrangements for food also and there is no condition that the licensee himself shall conduct the restaurant. The Insurance Court found fault with the appellant for not obtaining a copy of the licence from the Excise Department. But, P.W.1 himself had admitted that he is willing to produce the licence, but the same was not produced. It is also argued that it is admitted by P.w.1 that there are only two doors for the entire three establishments and one is used as a common entrance for all the three establishments and the other as exit. It is argued that the relationship of all parties is not considered. It is also argued that P.W.1 admitted that he received notice of inspection along with the connected records, but he has not appeared before the Regional Director and gave any explanation. According to the respondents, on receipt of the same, they sent a detailed reply and as such it is not necessary for them to appear and give any reply.

4. A perusal of the evidence shows that the Insurance

Court has not considered the oral evidence adduced by P.W.1 and also the oral evidence given by Deputy Director as D.W.1, but at the same time, the Regional Director has passed the order under Section 45A of the Act. Considering all aspects of the matter, I find that there is misreading of evidence by the Insurance Court and non-application of mind and, therefore, the order passed by the Insurance Court cannot be allowed to stand. But, I am of the view that it is just and proper that the appellant reconsiders the matter once again, with due notice to the respondents. For that purpose, the matter has to go back to the Regional Director again.

In the result, the appeal is allowed. The order passed by the Insurance Court as well as the order passed by the Regional Director are hereby set aside. The Regional Director is directed to pass fresh orders with due notice to the respondents. It is open to the respondents to adduce fresh evidence and produce all documents before the Regional Director. I.A.No.957 of 2004 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-